

## MEDICINE BOARD[653]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3(1)“k,” the Board of Medicine hereby proposes to amend Chapter 14, “Iowa Physician Health Committee,” Iowa Administrative Code.

Chapter 14 establishes the Iowa Physician Health Committee and a confidential monitoring and advocacy program for physicians with diagnosed mental health issues, physical disabilities or substance use disorders. The proposed amendments update language throughout Chapter 14 to provide clarity and to more closely align rules with practices of the Committee and the program. The amendments define program participants, the duties of the Committee’s officers, and the discretion of the Committee to report a participant to the Board of Medicine for noncompliance with the participant’s program contract.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on June 28, 2013.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on September 10, 2013. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on September 10, 2013, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Participant” in rule **653—14.2(272C)**:

“Participant” means an applicant or licensee who does any of the following: self-reports an impairment to the Iowa physician health program, is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C), signs an initial agreement with the Iowa physician health committee, or signs a contract with the Iowa physician health committee.

ITEM 2. Amend subrule 14.4(2) as follows:

**14.4(2) Officers.** The ~~committee~~ IPHC shall elect a chairperson and a co-chairperson or a vice chairperson at the last meeting of each calendar year to begin serving a one-year term on January 1.

a. The chairperson and co-chairperson are responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including negotiation and execution of initial agreements, contracts, and program descriptions and interim restrictions on practice on behalf of the committee. The IPHC retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

ITEM 3. Amend rule 653—14.5(272C) as follows:

**653—14.5(272C) Eligibility.** To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or ~~suspected~~ potential impairment directly to the IPHP or be referred by

the board for an impairment or ~~suspected~~ potential impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

**14.5(1)** ~~An applicant's or licensee's participation~~ Participation in the program does not divest the board of its authority or jurisdiction over the ~~applicant or licensee participant~~. ~~An applicant or licensee~~ A participant with an impairment or ~~suspected~~ potential impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

**14.5(2)** ~~An applicant or a licensee~~ A participant may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

*a.* The ~~applicant or licensee participant~~ provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the ~~committee~~ IPHC.

*b.* The ~~applicant or licensee participant~~ fails to sign a contract when recommended by the ~~committee~~ IPHC.

*c.* The IPHC determines it will be unable to assist the ~~applicant or licensee participant~~.

**14.5(3)** The IPHC shall report to the board any knowledge of violations of administrative rules or statutes other than the impairment, including, but not limited to, competency concerns or sexual misconduct.

ITEM 4. Amend rule 653—14.6(272C) as follows:

**653—14.6(272C) Type of program.** The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the ~~impaired licensee participant~~. The committee, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the ~~applicant's or licensee's participant's~~ impairment. The ~~committee~~ IPHC shall prepare a ~~health~~ contract, to be signed by the ~~applicant or licensee participant~~, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the ~~applicant's or licensee's participant's~~ obligations therein.

ITEM 5. Amend rule 653—14.7(272C) as follows:

**653—14.7(272C) Terms of participation.** A ~~licensee or an applicant participant~~ shall agree to comply with the terms for participation in the IPHP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

**14.7(1) Duration.** The length of time ~~an applicant or a licensee~~ a participant may participate in the program shall be determined by the ~~committee~~ IPHC in accordance with the following:

*a.* Participation in the program for ~~applicants or licensees participants~~ impaired as a result of alcohol or drug dependency or addiction is set at a minimum of five years. The ~~committee~~ IPHC may offer a contract with a shorter duration to ~~an applicant or licensee~~ a participant who can demonstrate successful participation in another state's physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

*b.* Length of participation in the program for ~~applicants or licensees participants~~ with impairments resulting from mental or physical disorders or disabilities will vary depending upon the recommendations provided by an approved evaluator and the determination of the ~~IPHP~~ IPHC following review of all relevant information.

**14.7(2) Noncompliance.** A ~~licensee or an applicant participating in the program participant~~ is responsible for promptly notifying the ~~committee~~ IPHC of ~~any instance~~ all instances of noncompliance including, ~~but not limited to,~~ a relapse. Notification of noncompliance made to the ~~IPHP~~ IPHC by the ~~applicant or licensee participant~~, any person responsible for ~~providing or monitoring treatment or treating the participant~~, or another party shall result in the following:

a. *First instance.* Upon receiving notification of a first instance of significant noncompliance including, but not limited to, a relapse, the ~~IPHP~~ IPHC shall make a report to the board which identifies the ~~applicant or licensee~~ participant by IPHP case number, describes the relevant terms of the ~~applicant's or licensee's~~ participant's contract and ~~the nature of the noncompliance,~~ and includes ~~recommendations~~ the IPHC's recommendation as to whether the ~~applicant or licensee~~ participant should be allowed to remain in the program ~~or whether formal disciplinary charges should be filed by the board.~~ Upon receiving the report, the board shall determine if formal disciplinary charges should be filed, pursuant to 653—subrule 23.1(12).

b. *Second instance.* Upon receiving notification of a second instance of significant noncompliance including, but not limited to, a relapse, the ~~IPHP~~ IPHC shall ~~nullify the contract and refer the case and the participant's identity to the board for the filing of formal charges or other appropriate action a determination of whether formal disciplinary charges should be filed or other appropriate action taken.~~ In its referral, the IPHC may make recommendations as to whether the participant should be allowed to remain in the program.

**14.7(3) Practice restrictions.** The ~~IPHP~~ IPHC may impose restrictions on the license to practice the applicable profession as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPHC determines, based on all relevant information, that the ~~licensee~~ participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a ~~licensee~~ participant is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that ~~the licensee or applicant~~ a participant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the ~~committee~~ IPHC shall refer the ~~applicant or licensee~~ participant to the board for appropriate action.

ITEM 6. Amend subrule 14.8(2) as follows:

**14.8(2) ~~An applicant's or licensee's participation~~ Participation in the program** ~~IPHP~~ shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. ~~An applicant or licensee~~ A participant who violates a statute or administrative rule of the board which is unrelated to impairment, including, but not limited to, competency concerns or sexual misconduct, shall be referred to the board in accordance with these administrative rules for appropriate action.

ITEM 7. Amend rule 653—14.9(272C) as follows:

**653—14.9(272C) Confidentiality.** Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about applicants or licensees in the program shall not be disclosed except as provided in this rule.

**14.9(1)** The IPHC is authorized pursuant to Iowa Code section 272C.6(4) to communicate information about ~~an~~ a current or former ~~IPHP participant to the applicable regulatory authorities or impaired licensee programs of in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant seeks licensure.~~ IPHP participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

**14.9(2)** The IPHC is authorized to communicate information about an IPHP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

**14.9(3)** The IPHC is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract as set forth in subrule 14.7(2). The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order,

or order following hearing. The IPHC is also authorized to communicate information about an IPHP participant to the board in the event the participant is under investigation by the board.

**14.9(4)** The IPHC is authorized to communicate information about ~~an~~ a current or former IPHP participant to the board if reliable information held by the IPHC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

**14.9(5) and 14.9(6)** No change.

ITEM 8. Amend rule 653—14.11(272C) as follows:

**653—14.11(272C) Board referrals to the Iowa physician health ~~committee~~ program.**

**14.11(1) *Eligibility for board referral to IPHP.*** The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

- a. The applicant or licensee has ~~an~~ a potential impairment as defined in rule 653—14.2(272C).
- b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the ~~IPHC~~ IPHP.

- c. No change.

**14.11(2) *Referral process.***

- a. and b. No change.
  - c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the ~~health~~ initial agreement or contract in the time period specified by the IPHC, the IPHC shall notify the board promptly.
  - d. When the referred applicant or licensee signs the contract, the IPHC shall notify the board ~~that the applicant or licensee is an appropriate candidate for participation in the IPHP and that the referral has been finalized.~~
  - e. Upon notification that the ~~referral~~ contract has been finalized for a ~~licensee~~ participant who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.
  - f. The IPHC shall notify the board upon the ~~licensee's~~ participant's successful completion of the program. The board may file an order recognizing the ~~licensee's~~ participant's successful completion of the program in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.
  - g. No change.
- 14.11(3)** No change.